

EX PARTE OR LATE FILED



Suite 1000  
1120 20th Street, N.W.  
Washington, DC 20036  
202 457-3810

January 14, 1997

Mr. William F. Caton  
Acting Secretary  
Federal Communications Commission  
1919 M Street, N.W.  
Room 222  
Washington, D.C. 20554

RECEIVED  
JAN 14 1997  
FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

Re: Ex Parte Presentation -- CC Docket No. 96-98

Dear Mr. Caton:

Today Gerry Salemme, AT&T's Vice President -- Government Affairs, sent the following letter to Chairman Reed Hundt. Copies of this letter were also provided to Commissioner Rachelle Chong; Commissioner Susan Ness; Commissioner James Quello; Regina Keeney, Chief of the Common Carrier Bureau; and Richard Welch, Chief of the Policy Division of the Common Carrier Bureau.

Two copies of this Notice, along with the attached letter, are being submitted to the Secretary of the FCC in accordance with Section 1.1206(a)(1) of the Commission's rules.

Sincerely,

A handwritten signature in cursive script that reads "Christine Enemark".

Christine Enemark

## Attachment

cc: Chairman Hundt  
Commissioner Chong  
Commissioner Ness  
Commissioner Quello  
Regina Keeney  
Richard Welch

No. of Copies rec'd  
List ABCDE

Handwritten initials "OZ" in a stylized cursive font.



**R. Gerard Salemm**  
Vice President - Government Affairs

Suite 1000  
1120 20th Street, N.W.  
Washington, DC 20036  
202 457-3118  
FAX 202 457-3205

January 13, 1997

The Honorable Reed Hundt  
Chairman  
Federal Communications Commission  
1919 M Street, N.W., Room 814  
Washington, D.C. 20554

Dear Chairman Hundt:

I am writing to you in response to a letter from a Pacific Telesis executive, who claimed I had "publicly misstated" Pacific Bell's ability and willingness to process customer requests for changes in their local service carriers in California. Pacific Telesis took issue with my statements that PacBell could process only 400 customer requests a day, and that it planned to upgrade its capacity to accommodate only 4000 customer requests by the end of January 1997.

My statements are indisputable, and based on facts that PacBell provided. PacBell itself stated, in early December, it had the capacity to process only 400 customer requests for changes in their local service carrier ("migration requests") a day. PacBell also described its plans to increase that capacity to 4000. My remarks correctly reflected both of these estimates. The fact remains that **even this tenfold capacity increase will ensure PacBell retains as much as 93 percent of its local telephone customers** through January 1998, despite new competition in its market. PacBell's hesitance to process these migration requests is in stark contrast with its ability to process 100 percent of all customer requests for changes in long distance carriers. No matter how low the price or how attractive the options offered by a local competitor, this processing limitation will continue to serve as a barrier to entry in the local telephone market.

This processing limitation is just one of the ways in which competitive service providers in California are handicapped. On December 23, 1996, AT&T filed an official complaint against PacBell in California addressing the problems I have outlined above. In the complaint, AT&T also asserts that problems with **PacBell's internal record keeping have resulted in a number of situations in which customers, who requested an alternative local service provider, had their telephone service disconnected altogether.** The complaint states that when a customer requests an alternate local carrier, PacBell orders its technicians to disconnect that service without ensuring either that the service request has been processed properly or that a contact number for AT&T customer service is provided to these customers who call with questions. As a result, AT&T has lost several potential business customers in California, and has even been sued by a potential customer who lost all local telephone service for over 12 hours.

Chairman Hundt  
January 13, 1997  
Page 2 of 2

In addition, as a term of its interconnection agreement with AT&T, PacBell agreed to provide a Firm Order Confirmation (or "FOC," a notice which confirms that a customer has been switched to a new provider or refusing the switch because of some error in the order) within four hours of receiving a migration request. In early November, PacBell admitted that it was not meeting that requirement, but it promised to provide four hour FOCs by November 15, 1996. Since then, PacBell has postponed the target date for four hour FOCs to May, 1997. Meanwhile, **as many of 25% of AT&T's migration requests were not addressed even within 24 hours, and as many as 33% of AT&T's migration requests were not completed by the requested due date.**

The complaint also alleges that PacBell also has failed to deploy an "interim electronic interface" to process orders as required by its interconnection agreement with AT&T. Instead, PacBell receives AT&T's electronically transmitted customer migration request at a display screen. The request, however, must then be typed manually into PacBell's handling system. **This manual intervention contributes to decrease significantly the number of migration orders PacBell can handle, and to increase the likelihood of error.**

The delays and potential errors in processing migration orders, as well as complete disruption of service for customers who migrate from PacBell to a competitive local service provider, are vivid examples of the kind of anti-competitive conduct in which a local monopoly provider can engage to limit the viability of potential competitors. The letter and the spirit of the Telecommunications Act of 1996 were designed to address problems such as these, and to open local markets to new competition.

I apologize for bothering you with this exchange of letters. It is critical, however, to highlight how regulatory intervention by a neutral third party is necessary to break up the local telephone monopolies, so that competitive providers can enter and flourish in the market.

Sincerely,



cc: Commissioner Chong  
Commissioner Ness  
Commissioner Quello  
Regina Keeney  
Richard Welch

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF CALIFORNIA

AT&T Communications of	)	
California, Inc. (U 5002 C),	)	
	)	
Complainant,	)	
	)	
v.	)	Case No. C-96-12-044
	)	
Pacific Bell (U 1001 C),	)	
	)	
Defendant.	)	
	)	

**COMPLAINT**

AT&T Communications of California, Inc. (U 5002 C) (hereinafter AT&T or Complainant) brings this Complaint against Pacific Bell (U 1001 C) (hereinafter Pacific or Defendant) pursuant to Sections 9-11 of the Rules of Practice and Procedure of the Public Utilities Commission of the State of California (Commission).

In this Complaint, AT&T shows that Pacific has instituted internal processes which have the effects of thwarting the Commission's policy, and the policy expressed in The Telecommunications Act of 1996, of fair and non-discriminatory resale competition. Specifically, AT&T shows that problems with Pacific's internal record keeping system will result in a substantial number of customers who switch their service to a competitive resale carrier having their service disconnected.

Further, Pacific has devoted such limited resources to the handling of resale orders from competitive carriers that it can presently handle only 400 per business day and only promises to improve its performance to 4,000 per business day no earlier than the end of January, 1997. Even if Pacific's systems work flawlessly and at full capacity, Pacific will insure that it retains over 93% of its local market at January 1, 1998, no matter how low the prices of its competitors nor how attractive their service options. This should be compared to Pacific's ability to change the selected long distance carrier of a customer, where Pacific can process more than 100% of its customers within that timeframe. Thus, if Pacific's long distance affiliate PB COM has an attractive offering, it will encounter no delays or backlog in having customers switched to it. In stark contrast, Pacific's local service resale competitors will have to endure long delays and backlogs, assuming their customers are even willing to put up with the delay.

This combination of delayed service, followed by disconnection, can have only one effect on customers considering switching to a competitor. Many will simply give up in frustration and may be forever lost to competitors. Pacific's acts and omissions concerning resale of local service are both anti-competitive and anti-consumer. They violate state and federal statutes and regulations and prior Commission decisions.

In order to prevent the Commission's pro-competitive resale policies from being thwarted at their very outset, AT&T urges the Commission to order Pacific to:

- No later than January 31, 1997, change its internal processes for handling the records of customers so that when one of its customers selects the service of a competing resale carrier, that customer will not suffer a disconnection or service outage;
- Immediately devote sufficient resources to its Local Interconnection Service Center, including the development of true electronic interfaces, and continue to do so throughout 1997, so that all orders from competing resale carriers can be handled within the same timeframe as Pacific provides service to its own end users and with the same reliability as Pacific provides service to its own end users; and
- Immediately honor its commitment to issue Firm Order Confirmations within four hours of receipt of an order from AT&T.

### **The Parties**

1. Complainant, AT&T, is a corporation organized and existing under the laws of the State of California. It is authorized by the Commission to provide interLATA and intraLATA telecommunication services throughout the state, as well as facilities-based and bundled resale competitive local services in the service territories of Pacific and GTE California Incorporated (GTEC).

AT&T's address and telephone number are as follows:

AT&T Communications of California, Inc.  
795 Folsom Street  
San Francisco, CA 94107  
(415) 442-2600

2. Defendant, Pacific, is a corporation organized and existing under the laws of the State of California. It is the largest local exchange carrier (LEC) authorized by the Commission to provide intraLATA and local exchange services within various geographical boundaries as identified in its tariffs on file with the Commission. Pacific's address and telephone number are as follows:

Pacific Bell  
140 New Montgomery Street  
San Francisco, CA 94105  
(415) 542-9000

#### **Communications**

3. All pleadings, correspondence and other communications concerning this complaint should be directed to the Complainant's attorney as follows:

William A. Ettinger  
AT&T Communications of California, Inc.  
795 Folsom Street  
San Francisco, CA 94107  
(Tel.) 415-442-2783  
(Fax.) 415-442-5505

## **Jurisdiction**

4. Under sections 701, 1702 and 1707 of the Public Utilities Code, the Commission is vested with broad authority to proscribe any breach of the Public Utilities Code, prior Commission decisions, or applicable provisions of federal or state law. Section 701 provides the broad grant of authority:

"The commission may supervise and regulate every public utility in the State and may do all things, whether specifically designated in this part or in addition thereto, which are necessary and convenient in the exercise of such power and jurisdiction."

Under sections 1702 and 1707, the Commission has jurisdiction over complaints by public utilities which set forth "any act or thing done or omitted to be done by any public utility [which is] in violation of any provision of law or of any order or rule of the commission." (§ 1702)

Further, the Commission has both the power and the obligation to assess and respond to competitive considerations in regulating utilities, Pacific Telesis Group, D. 93-11-011; Northern California Power Agency v. PUC, (1971) 5 Cal. 3d 370.

### **AT&T's Authority To Provide Resold Competitive Local Service**

5. AT&T was granted a certificate of public convenience and necessity by the Commission in Decision (D.) 96-02-072 to operate as a competitive local carrier (CLC) with authority to resell local exchange service within the service territories of Pacific and GTEC, effective March 1, 1996.



6. Pursuant to that authority, on June 26, 1996 AT&T filed a market trial with the Commission, effective July 1, 1996, to provide resold local service to the employees of its parent, AT&T Corp. That employee market trial was amended by a filing on August 5, 1996, effective September 5, 1996.

7. Pursuant to that authority, on August 29, 1996 AT&T filed a market trial with the Commission, effective September 6, 1996, to provide resold basic local service to business customers.

8. Pursuant to that authority, on October 18, 1996 AT&T filed a market trial with the Commission, effective November 18, 1996, to provide resold PBX trunks service to business customers.

9. Pursuant to that authority, on December 4, 1996 AT&T filed with the Commission, effective December 9, 1996 a tariff for the provision of resold local exchange service to residential customers in the service area of Pacific.

10. At all times relevant herein, AT&T obtained local exchange services for resale from Pacific from Pacific's Tariff SCHEDULE CAL. P.U.C. No. 175-T, Section 18, Services for Resale.

**Pacific Has Instituted Internal Practices Which Virtually Insure  
That Many CLC Resale Customers Will Have Their Service Disrupted**

11. In connection with AT&T's provision of resold basic local service to business customers, Pacific has on at least five (5) separate occasions

caused such customers to be disconnected and totally out-of-service for periods of up to 12 hours. Specifically:

a. AT&T's Business Customer A, with eleven (11) lines, was disconnected on November 8, 1996 at 7:39 a.m. and service was not reestablished until 5:45 p.m., and the customer was incorrectly reassigned to Pacific.

b. AT&T's Business Customer B, with four (4) lines, was disconnected on November 11, 1996 at 11:00 a.m. and service was not reestablished until 2:56 p.m.

c. AT&T's Business Customer C, with eight (8) lines, was disconnected on November 13, 1996 at 1:30 p.m. and service was not reestablished until 9:30 p.m. In addition, this customer had its "hunt group" feature removed without authorization on two prior occasions, November 9 and November 11.

d. AT&T's Business Customer D, with twelve (12) lines, was disconnected on November 23, 1996 at 4:30 p.m. and service was not partially reestablished until November 24, 1996 at 5:00 a.m.

e. AT&T's Business Customer E, with twenty (20) lines, was disconnected on November 25, 1996 at 3:19 and service was not reestablished until 4:45 p.m. This customer also experienced problems with its "hunt group" feature on November 22, 1996.

12. As a direct result of Pacific's actions in disconnecting its service, Customer D decided to terminate its local service with AT&T and became a

customer of Pacific for local service. Indeed, the co-owner of Customer D stated that he was told by Pacific's business service office, when he inquired about the outage on November 23, that AT&T ordered the service discontinued. Despite Pacific's agreement to do so, the Pacific business services representative did not give the customer the appropriate AT&T 800 number and, since November 23 was a Saturday, the customer did not know how to contact the appropriate AT&T office for help. As a result of the frustration this customer experienced, it has terminated its AT&T service and has claimed damages of \$15,000 from AT&T for the service interruption.

13. Pacific was made aware of the outages on each of the above-referenced occasions.

14. Further, on November 15, 1996 Ms. Lois Hedg-peth, AT&T's Vice President - Pacific States Local Service Organization, wrote to Ms. Elizabeth Fetter, Pacific's President - Industry Markets Group, informing Pacific of the problems AT&T was encountering with regard to Pacific's disconnection of AT&T's customers. A copy of that letter is attached and marked as Attachment 1.

15. Upon information and belief, AT&T alleges that the disconnection of AT&T's customers is a result of Pacific's anticompetitive practices in regard to handling the records of a customer who decides to obtain service from a CLC (referred to herein as a customer who "migrates").

16. Upon information and belief, AT&T alleges that Pacific does not migrate a resale customer to AT&T or any other CLC simply by changing the

customer's records. Rather, to migrate a customer Pacific issues two orders to its systems. First, it issues an order over its Customer Records Information System (CRIS), which is intended to inform the billing system to issue a final bill to the customer. Second, and at the same time, Pacific issues an order over its Carrier Access Billing System (CABS) which is intended to inform the switch and related records that the customer is not a Pacific customer but the customer of a CLC.

17. Upon information and belief AT&T alleges that if the CRIS and CABS orders become disassociated within Pacific's internal systems, then its CRIS order continues on past its intended function of only causing a final bill to be issued. The CRIS order proceeds on to technicians of Pacific informing them that the customer is no longer a Pacific customer and may be disconnected so that the associated cable pairs, switch terminations, and phone number may be reassigned. When this occurs the customer's service is disconnected and the customer is out of service, even though the customer is actually intending to receive resold service from a CLC.

18. Pacific's internal processes for handling the records of customers who have chosen the resold service of CLCs is seriously flawed. By including a "disconnect" order via its CRIS system, Pacific virtually insures that a substantial number of its competitors' customers will experience an interruption of service shortly after switching over their service. Pacific's internal processes thus result in unsatisfactory service for a substantial

number of its competitors' customers and, as shown in paragraph 12, place its competitors at a serious disadvantage.

19. AT&T has on several occasions (see Attachment 1) requested that Pacific fix its processes so that customer requests to migrate to a CLC are accomplished without Pacific issuing internal orders that could be interpreted as requiring physical disconnection and reconnection of service. To date, Pacific has not made a firm commitment to do so in a timely manner.

**Pacific Has Failed To Devote Adequate Resources To Process  
Customer Changes To CLCs, So That A Serious Backlog Will Occur**

20. Another serious problem with Pacific's processes for migrating customers to CLCs concerns the operation of its Local Interconnection Service Center (LISC). Upon information and belief, AT&T alleges that Pacific's LISC is the center responsible for handling all orders from CLCs to migrate resale customers from Pacific to the CLC.

21. On November 18, 1996, in the course of a meeting between Pacific and AT&T employees designed to resolve technical issues concerning customer migration, Ms. Jeanette Corby, Pacific's Vice President - AT&T Account, informed Ms. Mary Ann Collier, AT&T's Local Infrastructure and Access Management Vice President, that Pacific's LISC could handle only 400 to 500 migration orders per business day for the remainder of 1996 and

that beginning January 1, 1997 the capacity of the LISC would be expanded to handle only 1,000 migration orders per business day.

22. On November 25, 1996 Ms. Collier telephoned Ms. Corby to confirm that she had correctly understood the limitations of the LISC described above. Ms. Corby confirmed those limitations.

23. AT&T and Pacific had agreed that within four (4) hours of receipt of an order to migrate a customer, Pacific will issue a Firm Order Confirmation (FOC) either accepting the order and the cutover date, rejecting the order because of an error in the order, or indicating that the requested cutover date cannot be met (referred to as a "jeopardy"). In a letter dated October 22, 1996, Ms. Caryn Moir, Pacific's Director - Industry Markets, acknowledged the four hour FOC commitment, admitted that Pacific was not meeting that commitment, and stated that Pacific believed it could provide a four hour FOC by November 15, 1996. A copy of that letter is attached and marked as Attachment 2. Subsequently, at a meeting between AT&T and Pacific on November 4, 1996, Ms. Corby (Ms. Moir's supervisor) stated that Pacific would not meet the November 15th target for a four hour FOC. Thereafter, Pacific informed AT&T that Pacific's current target for a four hour FOC is May, 1997.

24. AT&T has tracked Pacific's performance in issuing FOCs within twenty-four (24) hours, a much longer period than the four (4) hours Pacific had previously agreed to. During the last two weeks of November approximately 25% of all AT&T migration orders were not responded to

within twenty-four hours. AT&T's tracking of Pacific's performance also revealed that during the last two weeks of November approximately 33% of the migration orders were not completed on the customer requested due date.

25. On December 3, 1996, concerned by the serious backlog Pacific was experiencing in handling AT&T's migration orders, and the likelihood of even greater backlogs as customer migration efforts of CLCs accelerated, Ms. Collier wrote to Mr. Jerry Sinn, Pacific's Communications Management Services Vice President, asking how many migration orders Pacific could process over the next six months. A copy of that letter is attached and marked as Attachment 3.

26. On December 4, 1996, Mr. Sinn responded to Ms. Collier by letter indicating that "the current overall LISC capacity is approximately 400 orders per day. Upon completion of additional mechanization efforts, we will move to approximately 2,000 orders per day by the end of January, 1997." A copy of this letter is attached and marked as Attachment 4.

27. On December 6, 1996, Ms. Collier again wrote to Mr. Sinn to confirm whether the numbers referenced in Mr. Sinn's letter constituted the capacity of the LISC for just AT&T or the CLC industry as a whole. Ms. Collier's letter also informed Pacific that the stated capacity of the LISC,

even if for AT&T alone, was insufficient.<sup>1</sup> A copy of that letter is attached and marked as Attachment 5.

28. On December 11, 1996, Ms. Corby wrote to Ms. Hedgpeth again confirming that Pacific "expect[s] to be able to manage 2,000 orders per day by the end of January." In the letter, Ms. Corby also acknowledges that "we have not met our four hour objective for FOC." A copy of that letter is attached and marked as Attachment 6.

29. However, just two days later on December 13, 1996, Pacific Telesis' Vice President - Washington Operations, Mr. Thomas Moulton, wrote to FCC Chairman, Mr. Reed Hundt, stating, "[s]ince then we have accelerated our efforts beyond what we told AT&T. We now will be prepared to handle 2000 orders a day by year's end, and 4000 orders a day by the end of January, 1997." AT&T has obtained a copy of this letter, but Pacific has never directly notified AT&T of Pacific's new view of its LISC capacity limits. A copy of that letter is attached and marked as Attachment 7.

30. Pacific's expressed ability to process customer migration orders through its LISC bottleneck is woefully inadequate. Ms. Moir's letter (Attachment 2) indicates that, "[s]ome of the problems that we have identified are: universal [sic] staffing in the LISC, inadequate staffing in the

---

<sup>1</sup> AT&T believes from the context of the letter that the quoted LISC capacity is for the entire CLC industry.



LISC, fully manual order processing, and inconsistent flow through NDM"  
(emphasis added).

31. In addition to the problems at the LISC identified in Ms. Moir's letter, and despite Pacific's agreement that it would process AT&T's migration orders utilizing an interim electronic interface, when such migration orders are electronically transmitted by AT&T to Pacific's LISC, such orders are not electronically and automatically entered into the requisite Pacific order handling systems. Upon information and belief AT&T alleges that the migration orders electronically transmitted by AT&T terminate at a display screen in the LISC. Sometime thereafter, a Pacific employee accesses the screen, reads it, and then manually types the information into the requisite Pacific order handling systems. Such manual intervention does not constitute an interim electronic interface as understood by AT&T and Pacific throughout discussions on this subject. Manual intervention significantly decreases the number of migration orders Pacific can handle, and significantly increases the likelihood of error by Pacific.

32. Deployment of interim electronic interfaces by Pacific are critical. In the interconnection agreement between Pacific and AT&T, the parties agreed upon an implementation schedule for true electronic interfaces by Pacific. However, pursuant to that schedule, all electronic interfaces for the ordering and pre-ordering processes are not scheduled to be deployed until April, 1998, and there is no guarantee that Pacific will be able to meet the

schedule. Until true electronic interfaces are fully deployed, interim electronic interfaces are vital to CLCs such as AT&T.

33. Pacific's promises concerning the capacity of its LISC in 1997 have changed from 1,000 on November 18 to 2,000 on December 4 to 4,000 on December 13, and it is, therefore, impossible for AT&T, or any CLC, to know what an accurate estimate of Pacific's LISC capacity is for 1997. It is interesting to note that Pacific doubled its estimate of its 1997 LISC capacity just one day after AT&T made its concerns known about the competitive local service entry restrictions being imposed by Pacific at a meeting attended by federal regulators.

34. However, even assuming Pacific's LISC operates at the full capacity stated in Attachment 7 on each business day in 1997, and without problems, Pacific will be able to process fewer than one million customer migration orders. Compared with Pacific's customer base of 15 million lines, this means that by January 1, 1998, almost two years after this Commission ordered resale competition, Pacific would insure itself a market share of over 93%.<sup>2</sup> This limitation on competitive inroads would occur no matter how attractive the price of CLCs' service, no matter how good the customer service of CLCs, and no matter how robust a marketing campaign the CLCs waged. By simply limiting its LISC capacity Pacific is in a position to single-

---

<sup>2</sup> This calculation assumes no growth in the market. Including normal growth and the addition of second lines would make Pacific's market share even greater.

handedly thwart the Commission's efforts to open up local exchange resale competition.

35. Pacific's limitations on its LISC capacity should be compared to its capacity to switch customers among long distance carriers (referred to as the customer's PIC) for both intra and interLATA service. In Investigation (I.) 87-11-033, IntraLATA Presubscription Phase, Pacific's witness, Ms. Eva Low, Pacific's Director, Switching Engineering, testified that Pacific would implement intraLATA presubscription coincident with its affiliate's (PB COM) entry into the interLATA market (Exhibit 10, pp. 18-19). Ms. Low further testified that Pacific could process between 50,000 to 80,000 PIC changes per day on Mondays through Saturdays and 100,000 to 120,000 PIC changes per day on certain Sundays (Exhibit 10, p. 19).

36. Thus, Pacific has created a situation whereby if its affiliate, PB COM, is successful in convincing customers to switch providers it will have its orders processed promptly and, according to Ms. Low, with little, if any, delay. Pacific has the capacity to change the PICs of more than 100% of its customers within one year. On the other hand, CLCs will encounter long delays in migrating customers from Pacific, assuming customers are even willing to put up with such delays. Pacific has the capacity to migrate just over 6% of its local customers within one year, if its systems work perfectly.

37. Despite AT&T's concerns expressed to Pacific, both orally and in writing, Pacific has not indicated that it will devote, in a timely manner, the

necessary resources to its LISC so that it will be able to process customer migration orders without significant backlog and delay.

**Pacific's Processes For Handling Customer Migration To CLCs  
Reselling Pacific's Services Are Anti-Competitive And Unlawful**

38. AT&T incorporates by reference, as if fully set forth herein, the allegations contained in paragraphs 1-37.

39. Pacific's processes for handling customer migration to CLCs reselling Pacific's services constitute a violation of Public Utilities Code section 709.5, which provides that all telecommunications markets subject to the Commission's jurisdiction be opened to competition not later than January 1, 1997 and that competition in telecommunications markets be fair. Pacific's processes in thwarting customer migration, as described above, virtually assure that no meaningful competition can begin until after January 1, 1998, at least a full year after the date mandated by statute. Further, Pacific's processes, which virtually guarantee that a large number of CLC resale customers will be disconnected, while its own customers suffer no such degradation of service, can hardly be considered "fair" competition.

40. Pacific's processes for handling customer migration to CLCs reselling Pacific's services constitute a violation of Public Utilities Code section 453(a), which prohibits a public utility from granting "any preference or advantage to any corporation or person or subject any corporation or person to any prejudice or disadvantage." Pacific's processes which severely

limit the number of CLC resale customers who can be migrated in 1997, when compared to the fact that in the same time period Pacific's processes can change the PIC of more than 100% of its customers, constitute a significant "preference or advantage" to its affiliate PB COM and a significant "prejudice or disadvantage" to all CLCs, in violation of Public Utilities Code section 453(a).

41. Pacific's processes for handling customer migration to CLCs reselling Pacific's service constitute a violation of the Commission's D.95-07-054. Appendix A to that Decision provides that:

"It is the policy of the Commission that all telecommunication providers shall be subject to appropriate regulation to safeguard against anti-competitive conduct" (Appendix A, Rule 1.D.).

By putting in place practices which severely limit the number of customers who can be migrated to CLCs and by utilizing practices which virtually insure that many of those customers who do migrate will have their service disconnected, Pacific is engaging in anti-competitive conduct. Customers whose orders are delayed or who have been disconnected will, in many cases, fault their CLC and return to Pacific (see paragraph 12). Indeed, after such frustrating experiences these customers may never be open to switching to a CLC, no matter how attractive the CLC's offer of service. Pacific's actions totally contravene the Commission's policy of fair competition.

42. Pacific's processes for handling customer migration to CLCs reselling Pacific's services constitute a violation of the Commission's D.96-02-072. The Commission stated in that Decision:

"[A]dequate service ordering interfaces are necessary to enable CLCs to offer a quality of service which is competitive with that of the LECs" (mimeo, p. 32).

The Commission adopted the following rule for LEC/CLC arrangements:

"LECs shall put into place an automated on-line service ordering and implementation scheduling system for use by CLCs" (Appendix E, Rule 8.C.).

Pacific's processes, as detailed above, do not "enable CLCs to offer a quality of service which is competitive with that of the LECs." In fact, Pacific's processes guarantee that CLCs' resold services will be of inferior quality to that of Pacific. Pacific's cumbersome CRIS/CABS systems do not meet the Commission's requirement for "automated on-line service ordering and implementation scheduling systems for use by CLCs." Further, Pacific's manual handling of orders at the LISC, as detailed in paragraph 31, is also in direct violation of the above-cited rule. Pacific has been on notice of the Commission's requirements for over ten months and has not put in place the required automated, on-line systems required by D.96-02-072.

43. Pacific's processes for handling customer migration to CLCs reselling Pacific's services constitute a violation of the Telecommunications Act of 1996 (TA 96) and the implementing regulations of the Federal Communications Commission (FCC) codified at Title 47, Code of Federal Regulations (CFR), Sec. 51, et. seq. TA 96, section 251(c)(4)(B) imposes

the duty on all incumbent LECs, including Pacific, not to impose unreasonable or discriminatory conditions or limitations on the resale of telecommunications service. Section 51.603 (at 47 CFR Sec. 51, et. seq.) of the FCC's implementing regulations provides:

"(a) A LEC shall make its telecommunications services available for resale to requesting telecommunications carriers on terms and conditions that are reasonable and non-discriminatory.

(b) A LEC must provide services to requesting telecommunications carriers for resale that are equal in quality, subject to the same conditions, and provided within the same provisioning time intervals that the LEC provides these services to others, including end users."

Pacific's processes, as detailed above, are in clear violation of TA 96 and 47 CFR § 51.603. Pacific is imposing discriminatory conditions on the resale of its service, is not providing service to CLCs equal in quality to the service provided its own end users, and is not provisioning service to CLCs in the same time intervals as it provides to its own end users.

44. Pacific's processes for handling customer migration to CLCs reselling Pacific's services constitute a violation of TA 96 section 251(c)(3), which imposes the duty on all incumbent LECs to provide nondiscriminatory access to network elements on an unbundled basis. The FCC has found that a LEC's operating support systems for pre-ordering, ordering and

provisioning, among others, constitute such unbundled network elements, 47

CFR § 51.313(c).<sup>3</sup> In this regard the FCC stated:

"Obviously, an incumbent that provisions network resources electronically does not discharge its obligation under section 251(c)(3) by offering competing providers access that involves human intervention, such as facsimile-based ordering." First Report and Order Memorandum Opinion and Order in Docket No. 96-98, paragraph 523.

Pacific's manual handling of orders at its LISC, as detailed in paragraph 31, is clearly in contravention of the FCC's mandate.

### **Request For Relief**

WHEREFORE, Complainant requests that the Commission:

(1) Order Defendant to comply with Public Utilities Code §§ 453 and 709.5; Decisions 95-07-054 and 96-02-072; and with TA 96 §§ 251(c)(3) and (4)(B), and 47 CFR §§ 51.313(c) and 51.603. Specifically, Pacific should be required to:

(a) No later than January 31, 1997, change its internal processes for handling the records of customers so that when one of its local service customers migrates to the service of a CLC that customer will not suffer a disconnection or service outage.

(b) Immediately devote sufficient resources to the operation of its LISC, including the development of true electronic interfaces, and

---

<sup>3</sup> On Friday, December 13, 1996 the FCC denied LEC Petitions for Reconsideration



continue to do so throughout 1997, so that all orders from CLCs for the migration of customers can be handled on a timely basis, i.e., within the same time frame as Pacific provides service to its own end users, and with the same reliability as Pacific provides service to its own end users.

(c) Immediately honor its commitment to issue a FOC within four hours of receipt of an order from AT&T to migrate a customer.

(2) Order such other and further relief as appears just and reasonable under the circumstances.

Dated this 23rd day of December, 1996 at San Francisco, California.

---

William A. Ettinger  
Senior Attorney  
AT&T Communications of  
California, Inc.  
795 Folsom Street, Room 625  
San Francisco, CA 94107  
Tel: (415) 442-2783  
Fax: (415) 442-5505

---

concerning its ruling regarding operational support system requirements.